AND TENANT § 210c; *King* v. *Wilson*, 98 Va. 259, 35 S. E. 727; *Dougal* v. *McCarthy*, [1893] L. R. 1 Q. B. 736. And whether a term is applicable is a question of fact for the jury. *Oakley* v. *Monck*, [1866] L. R. 1 Ex. 159; *Mayor of Thetford* v. *Tyler*, 8 Q. B. 95. In an analogous situation consistency with the tenancy from year to year is the test. Where a tenant enters under an agreement for a lease, which is never executed, and pays an annual rent, a tenancy from year to year arises. Into this tenancy the terms of the intended lease, as far as they are applicable, are imported. *Thomson* v. *Amey*, 12 A. & E. 476. It would seem that the test should be the same in both these situations as the tenancy from year to year is, in each case, created by operation of law. REDMAN, LANDLORD AND TENANT, 6 ed., 12. The principal case stands alone in failing to use the consistency test. The result also appears wrong; for in answer to the question of fact it would seem that an option to purchase is consistent with a tenancy from year to year. *D'Arras* v. *Keyser*, 26 Pa. 249.

LEGACIES AND DEVISES — ADEMPTION — DEVISE OF RENT CHARGE: EFFECT OF TESTATOR'S PURCHASE OF THE FEE. — A will contained a devise of a rent charge. Later the testator bought in the fee, the conveyance expressly stating that there was a merger. *Held*, that there was an ademption of the rent charge. *In re Bick*, [1920] 1 Ch. 488.

Ademption occurs whenever the specific thing has ceased to belong to the testator. *In re Bridle*, 4 C. P. D. 336. And the application of this doctrine does not depend upon the intention of the testator. *May* v. *Sherrard*, 115 Va. 617, 79 S. E. 1026; *Stanley* v. *Potter*, 2 Cox 180. Although the principle is usually strictly applied, a mere change in the form of the *res* is held not to involve ademption. *In re Clifford*, [1912] 1 Ch. 29; *Spinney* v. *Eaton*, 111 Me. 1, 87 Atl. 378; *Clough* v. *Clough*, 3 Myl. & K. 296. The present case is one of a class of cases where the change, although it does not result in a surrender of the *res*, is more than formal. Thus, on purchase of the fee, a leasehold held by the purchaser merges therein and a specific legacy of such a leasehold is adeemed. *Emuss* v. *Smith*, 2 De G. & S. 722; *Capel* v. *Girdler*, 9 Ves. Jr. 509. Similarly, a bequest of a sublease is adeemed by taking an assignment of the original lease. See *Porter* v. *Smith*, 16 Sim. 251. In the converse case it has been held that a devise of a specific tract of land is not adeemed *in toto* by a subsequent lease. *Brady* v. *Brady*, 78 Md. 461, 28 Atl. 515.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — AMOUNT OF COMPENSATION: TIPS RECEIVED IN COURSE OF EMPLOYMENT. — Claimant was a truck driver, engaged in delivering meat. Without the knowledge of his employer, he assisted his employer's customers in hanging up meat after delivery, and received tips for these services. *Held*, that the tips should not be considered in fixing the amount of compensation. *Begendorf* v. *Swift & Co.*, 183 N. Y. Supp. 917.

Workmen's Compensation Acts provide for compensation based on the "earnings" or "wages" of the employee. See 6 EDW. 7, c. 58, sched. 1, § 2; 1913 NEW YORK LAWS, c. 816, §§ 3 (9), 14. But such "earnings" or "wages" include more than the actual money paid by the employer. That tips may be taken into account in some cases is indisputable. *Penn* v. *Spiers & Pond, Ltd.*, [1908] 1 K. B. 766 (waiter); *Bryant* v. *Pullman Co.*, 188 App. Div. 311, 177 N. Y. Supp. 488, aff'd 228 N. Y. 579, 127 N. E. 909 (porter); *Sloat* v. *Rochester Taxicab Co.*, 177 App. Div. 57, 163 N. Y. Supp. 904, aff'd 221 N. Y. 491, 116 N. E. 1076 (taxicab driver). *Capen* v. *Terminal Hotel Co.*, 1 Cal. Industr. Acc. Comm., pt. 2, 562 (bell-boy). The principal case, however, is distinguishable, and the decision seems correct. The problem is one of statutory construction, to determine under what circumstances tips are a part of "earnings" or "wages" within the meaning of the statutes. The line may properly be

drawn between cases where the expectation of receiving gratuities is, expressly or impliedly, part of the consideration for the contract of employment and the employee receives correspondingly less from the employer, and cases where the receipt of gratuities is not contemplated by the parties to the contract. See *Reynolds* v. *Smith*, 1 Cal. Industr. Acc. Comm., pt. 2, 35; *contra*, *Knott* v. *Tingle, Jacobs & Co.*, 4 Butterworth W. C. C. 55.

MUNICIPAL CORPORATIONS — DEBTS AND CONTRACTS — LIABILITY FOR SERVICES PERFORMED UNDER VOID CONTRACT. — The board of election commissioners of the defendant city contracted with the plaintiff for the purchase of one thousand voting machines. The plaintiff delivered two hundred which the board accepted and paid for. Three hundred more were then accepted. Thereupon the board was restrained in a taxpayer's suit from accepting any more machines. The plaintiff sued for the contract price. A statute provided that no contract should be made without a prior appropriation therefor (1917 ILL. REV. STAT., c. 24, § 91). No appropriation had been made. *Held*, that the plaintiff cannot recover. *Empire Voting Mach. Co.* v. *Chicago*, 267 Fed. 162 (C. C. A.).

Statutes like that in the principal case are generally considered mandatory. *Roberts* v. *Fargo*, 10 N. D. 230, 237, 86 N. W. 726, 729. It follows that contracts made in violation thereof are void. *Green* v. *Everett*, 179 Mass. 147, 60 N. E. 490; *Hurley* v. *Trenton*, 66 N. J. L. 538, 49 Atl. 518, aff'd, 67 N. J. L. 350, 51 Atl. 1109. But where the plaintiff has fully performed, recovery of at least the fair value of materials or services rendered is sometimes allowed. Various grounds are assigned as the basis of this recovery: estoppel, ratification, quasi-contract, general considerations of justice. See *Argenti* v. *San Francisco*, 16 Cal. 255, 274; *Conyers* v. *Kirk*, 78 Ga. 480, 3 S. E. 442; *Ward* v. *Forest Grove*, 20 Or. 355, 25 Pac. 1020; *Miles* v. *Holt County*, 86 Neb. 238, 125 N. W. 527; see 3 MCQUILLAN, MUNICIPAL CORPORATIONS, § 1181. Apart from serious technical objections to all of these grounds, allowing recovery qualifies and often almost vitiates the statutory command, so it is denied by the weight of authority. *Indianapolis* v. *Wann*, 144 Ind. 175, 42 N. E. 901; *Gutta-Percha Manufacturing Co.* v. *Ogalalla*, 40 Neb. 775, 59 N. W. 513. The minority view can perhaps be explained by a failure to distinguish between mandatory and merely directory provisions. Violation of the latter is usually held to make the contract voidable only; in such a case even if the contract is avoided compensation for the executed consideration is properly granted. *Wentink* v. *Passaic*, 66 N. J. L. 65, 48 Atl. 609; see 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 793. The practical hardship of denying any pecuniary remedy when the contract is void is mitigated by allowing the plaintiff to regain in specie what he has given, where, as in the principal case, that is physically possible. *Chapman* v. *Douglas*, 107 U. S. 348; see *La France Engine Co.* v. *Syracuse*, 33 Misc. 516, 519, 68 N. Y. Supp. 894, 897.

MUNICIPAL CORPORATIONS — GOVERNMENTAL POWERS AND FUNCTIONS — RIGHT TO AUTHORIZE NUISANCES IN CITY STREETS. — The city of Buffalo authorized the erection, by a private company, of twenty-five news-stands on the city streets. The Supreme Court issued a peremptory writ of mandamus to the city council directing an order for their removal. *Held*, that the writ be sustained. *People ex rel. Hofeller* v. *Buck*, 193 App. Div. 262, 184 N. Y. Supp. 210.

Any unauthorized encroachment upon a street or highway constitutes a nuisance *per se*, and may be abated, even though it does not actually operate as an obstruction to travel. *State* v. *Berdetta*, 73 Ind. 185; *Lacey* v. *Oskaloosa*, 143 Ia. 704, 121 N. W. 542. See 2 ELLIOTT, ROADS AND STREETS, 3 ed., § 828. In the absence of legislative authority, a municipality has no right to authorize